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UNTIL

1981

Registration of Criminals Enactment 1949.

No 9 of 1949.

Previous

Subsequent

H531

29/6

H546 Mr Scott (m)

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Mr M. Scott.

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Sir S. Abrahamson

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1 BRUNEI SAV 55 — 13. 6. 50.
(W/LEGAL REPORT + ENACTMENT)

Legal Advisor
S. Abraham

Sir

OK.02
Please attach relevant pps
HS31 5/7.

The F.M.S. Criminal Procedure Code is applied in Brunei, but since the Code does not contain provisions as to the taking of finger impressions + photographs, it is necessary to pass an enactment giving this effect.

Enactment No. 9 of 1949 at (1) is modelled on the F.M.S. Registration of Criminals Ord., 1948 and as will be seen from the comparative table attached with the legal report, follows it closely.

The main difference is that the new Brunei Enactment defines "Registrar" as being the Registrar for Sarawak, Malaya and N. Borneo instead of providing for the appointment of a Registrar and the setting up of a registry in Brunei.

Have you any legal obsns. on the Enactment please?

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H.C. Brunei Sav 75

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From the Secretary of State for the Colonies.

To the High Commissioner for Brunei.

Date. 31. August, 1950.

No. 75. Saving.

Your Savingram No. 55 dated 13th June 1950.

I have no observations to make on the following
Enactments:-

Aliens Registration (Amendment) Enactment No. 4
of 1949.

Police Force Enactment, No. 6 of 1949.

Registration of Criminals Enactment, No. 9 of 1949.

Moratorium Proclamation (Repeal) Enactment No. 10
of 1949.

Limitation (Special Provisions) Enactment No. 11
of 1949.

SECEP.

PAS/OBH.

REF: 13/HCO/110.

SAVING.

From the High Commissioner for Brunei.

To the Secretary of State for the Colonies.

Date 13th June, 1950.

No. 55 Saving.

----- I enclose Legal Reports by the Legal Adviser
on the following Brunei Enactments:-

~~Forest (Amendment) Enactment, No. 2 of 1949.~~
~~National Registration Enactment, No. 3 of 1949.~~
~~Aliens Registration (Amendment) Enactment, No. 4~~
~~of 1949.~~
~~Immigration (Amendment) Enactment, No. 5 of 1949.~~
~~Police Force Enactment, No. 6 of 1949.~~
~~Societies (Amendment) Enactment, No. 7 of 1949.~~
~~Diplomatic Privileges (Extension) Enactment, No.~~
~~8 of 1949.~~
~~Registration of Criminals Enactment, No. 9 of~~
~~1949.~~
~~Moratorium Proclamation (Repeal) Enactment, No.~~
~~10 of 1949.~~
~~Limitation (Special Provisions) Enactment, No. 11~~
~~of 1949.~~
~~Debtor and Creditor (Occupation Period) Enactment,~~
~~No. 12 of 1949.~~
~~Income Tax Enactment, No. 13 of 1949.~~
~~Motor Vehicles Insurance (Third Party Risks) En-~~
~~actment, No. 14 of 1950.~~

2. Copies of Enactment No. 1 of 1949 were
forwarded under my savingram No. 25 of 16th March,
1949, Enactment No. 2 of 1949 under my savingram
No. 56 of 25th June, 1949, and of Enactment No. 3 of
1949, under my savingram No. 82 of 14th September,
1949.

----- 3. I now enclose 10 copies of each of the re-
maining Enactments.

4. There is a printer's error in the penulti-
mate line of Enactment No. 5 of 1949. The word "as"
should read "was".

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STATE OF BRUNEI

Registration of Criminals Enactment, 1949.

(Enactment No.9 of 1949).

Legal Report.

Prior to 1939, the taking of finger impressions and photographs was authorized by section 469 of Straits Settlements Criminal Procedure Code which up to that year applied to Brunei. But by the Federated Malay States Laws Adoption Enactment, 1939, the Federated Malay States Criminal Procedure Code was applied and this Code does not contain any provisions as to the taking of finger impressions and photographs. In spite of there being no authority for so doing, the practice of taking finger impressions and photographs and sending them for registration to Kuala Lumpur and Kuching continued.

2. This Enactment is modelled on the Federation of Malaya Registration of Criminals Ordinance, 1948. But instead of providing for the appointment of a Registrar of Criminals and the setting up of a registry, "Registrar" is defined as being the Registrars for Sarawak, Federation of Malaya and North Borneo or any of them (the Governments of these territories having agreed to register Brunei criminals); and the Enactment does ^{not} purport to regulate or control the duties of such registrars. This has been done because it did not seem proper for the Brunei legislature to enact legislation purporting to have effect outside the State and to regulate and control the officer of the Government of another territory. In the Federation of Malaya Ordinance provision is made for registering particulars transmitted from other territories, and similar provision will be made in due course in Sarawak.

3. A Comparative Table is attached hereto.

A. J. Patten Bell

Legal Adviser,
Brunei.

June 7th, 1950.

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STATE OF BRUNEI

Registration of Criminals Enactment, 1949.

(Enactment No.9 of 1949).

Comparative Table.

This Enactment is based on the Federation of Malaya Registration of Criminals Ordinance, 1948 (Ordinance No.18/48) hereinafter referred to as the model.

| <u>Section</u> | <u>Marginal Note</u> | <u>Source</u> |
|----------------|--|--|
| 1. | Short title and commencement. | — |
| 2. | Interpretation. | Section 2 of model - adapted. |
| 3. | Finger impressions and photograph of person under arrest. | Section 8 of model. |
| 4. | Finger impressions and photograph of convicted persons. | Section 9 of model - adapted. |
| 5. | Finger impressions and photograph of discharged persons. | Section 10 of model - adapted. |
| 6. | Finger impressions of prisoners and banishees. | Section 11 of model - adapted. Section 11(4) omitted. |
| 7. | Discretionary power to dispense with registration. | Section 7(1) of model - adapted. |
| 8. | Duty to submit to taking of photograph and finger impressions. | Section 13 of model. |

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SectionMarginal NoteSource

| | |
|--------|----------------------------|
| 9.-(1) | Provisions as to evidence. |
| 9.-(2) | -do- |
| 9.-(3) | -do- |
| 10. | Power to vary Schedules. |
| 11. | Saving. |
| | SCHEDULES. |

| |
|-----------------------------------|
| Section 14(1) of model - adapted. |
| New. |
| Section 14(2) of model. |
| Section 15 of model - adapted. |
| New. |
| New. |

9 1.

STATE OF BRUNEI

ENACTMENT NO. 9 OF 1949

An Enactment to provide for the Registration of Criminals.

E. E. F. PRETTY,
British Resident,
Brunei.

2nd December, 1949

WHEREAS the Governments of the Federation of Malaya, the Colony of Sarawak and the Colony of North Borneo have agreed to register the names and particulars of persons convicted of Crime within the State of Brunei:

Be it therefore enacted by His Highness the Sultan in Council as follows:

1.—This Enactment may be cited as the Registration of Criminals Enactment, 1949, and shall come into force on the 2nd day of December, 1949.

Short title
and com-
mencement.

2.—In this Enactment, unless the context otherwise requires—

Interpretation.

“crime” means any offence included for the time being in the First or Second Schedule to this Enactment;

“finger impression” includes thumb impression;

“police officer” includes a Custom officer appointed under the Customs Enactment, 1906, and an officer appointed under the Excise Enactment, 1924, in any case concerning an offence or alleged offence against any law or provision of law which it is the duty of such officer to enforce;

Enactments
No. 11 of 1906
and No. 2
of 1924.

“Registrar” means the Registrar of Criminals appointed under any written law relating to the registration of criminals for the time being in force in the Federation of Malaya, the Registrar of Criminals appointed under any written law relating to the registration of criminals for the time being in force in the Colony of Sarawak and the Registrar of Criminals appointed under any written law relating

to the registration of criminals for the time being in force in the Colony of North Borneo or any of them, and includes an Assistant Registrar of Criminals appointed as aforesaid.

Finger impressions and photograph of person under arrest.

3.—Any police officer may take or cause to be taken the finger impressions and photograph of any person under arrest who is accused of any crime, and may send such impressions and photograph to the Registrar for identification and report.

Finger impressions and photograph of convicted persons.

4.—When any person has been convicted of a crime, the police officer in charge of the case shall—

- (a) take or cause to be taken the finger impressions of the person so convicted, unless this has already been done;
- (b) endorse particulars of the conviction and sentence or order upon the sheet upon which the finger impressions have been made;
- (c) authenticate such endorsement with his signature; and
- (d) forward to the Registrar for registration such sheet, duly endorsed and authenticated as aforesaid, and also, if required by the Registrar, one copy of any photograph of such person taken under section 3 of this Enactment.

Finger impressions and photograph of discharged persons.

5.—(1) When any person whose finger impressions and photograph or either have been taken under this Enactment is acquitted or discharged without a conviction being recorded against him, the police officer in charge of the case shall—

- (a) endorse particulars of the acquittal or discharge upon the sheet upon which the finger impressions have been made;
- (b) authenticate such endorsement with his signature; and
- (c) forward such sheet, duly endorsed and authenticated as aforesaid to the Registrar.

(2) The Chief Police Officer shall, upon the application of the person so discharged or acquitted, deliver to him any sheet upon which his finger impressions have been made and any copy of any photograph taken of him, under this

Enactment, and not forwarded to the Registrar and the negative of any such photograph, or, if no such application is received within three months from the date of acquittal or discharge, shall destroy every such sheet and every such negative and photograph.

6.—(1) The officer in charge of any prison shall cause the finger impressions and photograph of every prisoner convicted of a crime or ordered to be banished or expelled to be taken as soon as conveniently may be, and shall attach a description of the prisoner, including his sex, age or apparent age, bodily appearance, height and any distinctive marks appearing on the person, together with the name or names by which the prisoner is or is believed to have been known, and any other available information as to the personal identity of which such prisoner, and also particulars of the crime of which such prisoner has been convicted or of the order of banishment or expulsion made against him.

Finger impressions of prisoners and banishees.

(2) Such officer shall forthwith record in his own office one copy of such photograph, finger impressions and description, and shall forward to the Registrar for registration—

- (a) in the case of a prisoner convicted of a crime, one copy of such finger impressions and description and, if required by the Registrar, one copy of such photograph;
- (b) in the case of a prisoner ordered to be banished or expelled, three copies, or such greater number of copies as the Registrar may require, of such photograph, finger impressions and description.

(3) Every copy of a photograph, finger impression or description recorded or forwarded under subsection (2) of this section shall be authenticated with the signature of the officer recording or forwarding the same.

7.—The Chief Police Officer may in his discretion direct, either generally or in particular cases, that the finger impressions and photograph of any person who—

Discretionary power to dispense with registration.

- (a) has been convicted of an offence included in the Second Schedule to this Enactment; and
- (b) has upon such conviction been sentenced to fine not exceeding twenty-five dollars and not to imprisonment except in default of payment of such fine; and

(c) has not previously been registered as a criminal,

need not be taken as provided in section 4 or 6 of this Enactment.

Duty to submit to taking of photograph and finger impressions.

8.—(1) Every person under arrest accused of a crime and every person convicted of a crime and every prisoner convicted of a crime or ordered to be banished or expelled shall be legally bound to submit to the taking of his photograph and finger impressions as provided in this Enactment, and may be compelled thereto by the use of such force as may be necessary.

(2) Any person who, being legally bound under subsection (1) of this section to submit to the taking of his photograph or finger impressions, refuses or fails to submit thereto on demand by a police officer or by an officer in charge of a prison, shall be liable to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term which may extend to one month or to both such fine and imprisonment.

Provisions as to evidence.

9.—(1) Every photograph, finger impression and description, if duly produced from proper custody and authenticated as aforesaid, and every certificate of previous conviction or of order of banishment purporting to be compiled from particulars furnished to the Registrar under the provisions of this Enactment, shall, if authenticated by the signature of the Registrar, be admissible in evidence in any Court and shall be sufficient proof of the facts therein stated and appearing unless and until the same be disproved.

(2) A certificate of previous conviction purporting to be compiled from entries made prior to the coming into force of this Enactment in a registrar established or kept under the provisions of rule 3A of the Prison Rules shall, if authenticated by the signature of the officer having custody of the register, be admissible in evidence in any Court and shall be sufficient proof of the facts therein stated and appearing unless and until the same be disproved.

(3) Any document purporting to be a report under the hand of the Registrar upon any matter or thing relating to finger impressions duly submitted to him for report shall be admissible in evidence in any Court unless the Court shall require the Registrar to be called as a witness.

Power to vary Schedules.

10.—The Resident may by order delete any provision from, or add to or vary the provisions of, any Schedule to this Enactment.

11.—All finger impressions, photographs and particulars taken and forwarded to the Registrar prior to the coming into force of this Enactment shall be deemed to have been taken and to have been forwarded to the Registrar under the provisions of this Enactment. Saving.

FIRST SCHEDULE

Offences required to be registered

(a) Offences under the Penal Code.

| Chapter and Sections. | Offences |
|---------------------------|---|
| Chapter VI, the whole | .. Offences against the State. |
| Sections 131-136 | .. Relating to Army and Navy. |
| Chapter XII, the whole | .. Relating to Coins and Stamps. |
| Sections 302-308 | Offences affecting Life. |
| " 312-318 | .. Offences relating to Birth. |
| " 363-373A | .. Kidnapping, Slavery. |
| " 376-377 | .. Rape, Unnatural Offences. |
| " 379-424 | .. Theft, Cheating. |
| " 429-433; 435-440 | .. Mischief. |
| " 448-462 | .. Trespass, House-breaking, etc. |
| " 465-477A | .. Forgery. |
| " 489A-D | .. Relating to Currency Notes and Bank Notes. |
| Chapter V and Section 511 | .. Abetment of and Attempt to Commit any of the above Offences. |

(b) Offences under Enactments other than the Penal Code.

| | |
|---------------------------------------|----------------------------|
| Enactment 1 of 1914 Post Office | .. Sections 60-79. |
| " 2 of 1914 Telegraphs | .. " 18, 20-24, 26 and 27. |
| " 2 of 1918 Banishment | .. " 5 and 6. |
| " 4 of 1929 Minor Offences | .. " 22, 23, 31 and 36. |
| " 1 of 1930 Poisons | .. " 9 |
| " 3 of 1948 Sedition | .. " 5 and 7. |
| " 4 of 1948 Undesirable Publications | .. " 4 and 5. |
| " 8 of 1948 Church and Civil Marriage | .. " 26-31. |
| " 11 of 1948 Societies | .. " 5 and 7. |
| Criminal Procedure Code | .. " 67-69, 79 and 297. |

SECOND SCHEDULE

**Offences in respect of which the taking of finger impressions
may be dispensed with under Section 7****(a) Offences under the Penal Code.****Chapter and Sections.****Offences**

| | | |
|----------------------------------|----|---|
| Sections 144-150; 152-158 | .. | Unlawful Assembly, Rioting, etc. |
| " 161, 162, 164 and 165 | .. | Illegal Gratification. |
| " 170 | .. | Relating to Public Servants. |
| " 177, 181 and 189 | .. | False Information, etc. |
| " 193-201 | .. | False Evidence. |
| " 203-222 | .. | Screening Offenders, etc. |
| " 224, 225, 225A, 227 and 229 | .. | Escapes, etc. |
| " 270, 281 and 295 | .. | Public Safety, Religion. |
| " 324-333; 335-338 | .. | Causing Hurt. |
| " 343-348 | .. | Wrongful Confinement. |
| " 353-356 | .. | Criminal Force. |
| " 427-428 | .. | Mischief. |
| " 493-496 and 498 | .. | Offences relating to Marriage. |
| " 504-507 | .. | Criminal Intimidation. |
| Chapter V and Section 511 | .. | Abetment of and Attempt to Commit any of the above Offences. |

(b) Offences under Enactments other than the Penal Code.

| | | |
|---|----|-------------|
| Enactment 2 of 1906 Customs | .. | Section 8 |
| " 5 of 1908 Coins | .. | " 5 |
| " 1 of 1918 Trespass on Royal Property | .. | " 3 |
| " 3 of 1919 Common Gaming House | .. | " 4 and 5 |
| " 5 of 1920 Aliens Registration | .. | " 8 and 9 |
| " 2 of 1924 Excise | .. | " 32-35 |
| " 1 of 1927 Arms and Explosive | .. | " 4 |
| " 3 of 1932 Opium and Chandu | .. | " whole |
| " 4 of 1932 Labour Code | .. | " 13 and 32 |
| " 5 of 1947 Immigration | .. | " 10 |
| " 11 of 1948 Societies | .. | " 22 |

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Enactments. Registration of Criminals Enactment No 9 of 1949. 1950. MS Records of the British Colonial Office CO 943/2/2. The National Archives (Kew, United Kingdom). State Papers Online Colonial, link.gale.com/apps/doc/DVAUQ0719250598/SPOC?u=omni&sid=bookmark-SPOC&pg=1. Accessed 21 Dec. 2024.